

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARC HENIG,

Plaintiff,
-against-

MEMORANDUM AND ORDER
09-CV-5649 (JS) (WDW)

TOWN OF BABYLON,

Defendant.

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APPEARANCES:

For Plaintiff: Marc Henig, Pro Se
145 Wright Ave.
Deer Park, NY 11729

For Defendant: No appearances

SEYBERT, District Judge:

In an Order dated March 18, 2010, this Court dismissed the Complaint of pro se Plaintiff, Marc Henig ("Henig") for lack of subject matter jurisdiction. The Court explained:

In this case, Plaintiff and Defendant reside in New York, and the amount in controversy is \$3,500, well under the \$75,000 threshold. 28 U.S.C. § 1332. Therefore, the Court cannot exercise diversity jurisdiction over this case. Additionally, Plaintiff provides no basis from which federal subject matter jurisdiction may be established. In sum, Plaintiff's claims, as alleged and liberally construed, fail to provide this Court with subject matter jurisdiction. Accordingly, the Court dismisses Plaintiff's case without prejudice. Plaintiff is able to pursue any valid claims in state court or amend so as to establish jurisdiction here. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and

therefore in forma pauperis status is denied for purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962). If Plaintiff wishes to amend, he must do so by April 30, 2010, otherwise, the Complaint will be dismissed with prejudice, and the case will be closed.

(Mar. 18 Order 3-4.) Since that time, Plaintiff has not submitted an Amended Complaint. Instead, in an attempt to circumvent dismissal of his case with prejudice, Plaintiff has submitted a request to discontinue his case, without prejudice, with leave to reopen. Such an application, however, is inappropriate because there is no Complaint currently pending before the Court. Moreover, the Court does not even have the power to hear this case because the Court lacks subject matter jurisdiction.

Accordingly, the Complaint is DISMISSED with prejudice. The Clerk of the Court is directed to terminate any pending applications and to mark this matter CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: May 30, 2010
Central Islip, New York